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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 894

HAROLD WILLEY, *Petitioner*

v.

REVIEW COMMITTEE, VENUE VII, COMMODITY STABILIZATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, SITTING IN THE CITY OF WAHOO, NEBRASKA, IN AND FOR SAUNDERS COUNTY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Harold Willey, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above-entitled case on February 18, 1960.

OPINIONS BELOW

The United States District Court wrote a memorandum opinion, which is unreported. It is set forth

in the Record (R. 9). The opinion of the United States Court of Appeals is reported in 275 F. 2d 264, and a copy thereof is printed in the Appendix hereto (App. pp. 1a-21a). The Court's order of February 18, 1960, is set forth in the Appendix, *infra*, pp. 21a-22a.

JURISDICTION

The judgment of the Court of Appeals was entered on February 18, 1960, Appendix, *infra*, pp. 21a-22a. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the declaration of policy by Congress for the Agricultural Adjustment Act of 1938 is the yardstick by which the correctness of the Department of Agriculture's interpretations and actions will be measured.

2. Whether Congressional intent with respect to the Agricultural Adjustment Act of 1938 is to be found by examining the Act as a whole and not by looking to any particular provision.

3. Whether a farmer who has established and placed in effect a long-range crop-rotation system before past acreage of wheat was made a statutory factor and before acreage allotments were imposed, must accept an acreage allotment based upon his wheat crop history.

4. Whether the regulations and interpretations of the Department of Agriculture, which exclude long-range crop-rotation systems from consideration, where crop-history furnishes no proper indication of an appropriate wheat base, are beyond the limits of administrative interpretation.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C., Sections 1282, 1332, 1333, 1334, 1340, 1363, 1365, 1366, 1368, 1375, 1388; the relevant provisions of the Soil Conservation and Domestic Allotment Act, 16 U.S.C., Sections 590g and 590h; the relevant provisions of the Sugar Act of 1948, 7 U.S.C., Section 1115; the relevant provisions of the Regulations of the Department of Agriculture, 7 C.F.R. (1959 Supp.) 711.4, 711.12, 711.23, 728.911, 728.914, 728.917; 1959 Wheat Allotment County Handbook (1-Wheat-59) (Part 9), Section 25.C.3., are set forth in the Appendix, *infra*, pp. 22a-38a.

STATEMENT

I. The Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. 1281 et seq., directs the Secretary, by May 15 each year, to proclaim the "national acreage allotment" for the following year's crop of wheat. 7 U.S.C. 1332 (App., *infra*, pp. 22a). This allotment is defined as the acreage that normally produces an amount of wheat which, when added to carry-over and imports, will equal a normal year's domestic consumption and exports plus 30 per cent. In no case, though, may the national allotment be less than 55,000,000 acres. 7 U.S.C. 1333 (App., *infra*, pp. 23a).

The Act provides for the apportionment of the national wheat acreage allotment among the States; for the state acreage allotment to be apportioned among the counties; and for the allotment to each county to be apportioned by local farmer committees, among the farms within each county. 7 U.S.C., 1334(a), (b), (c) (App., *infra*, pp. 23a-24a). In apportioning the national allotment among the States, the Secretary, after

setting aside a one per cent reserve, is required to allocate to each State individual allotment bases, in general, upon "the acreage seeded for the production of wheat" during the prior ten years "with adjustment for abnormal weather conditions and trends in acreage during such period." These state allotments, less a reserve of up to three per cent, are then distributed among the counties. The criteria for this distribution are the same as for the allocation of the national allotment to the States, except that the Secretary is required also to take into account "the promotion of soil-conservation practices." Finally, the county allotments are allocated to individual farms by the local committees on the basis of "past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography." The Secretary is given authority to "prescribe such regulations as are necessary for the enforcement of the Act." 7 U.S.C. 1375(b) (App., *infra*, p. 27a).

On March 21, 1958, the Secretary announced the allocation of the 55 million-acre national allotment among the States. Nebraska, in which the petitioner's farm is located, was allocated 3,204,664 acres. 23 F.R. 1985, 7 C.F.R. (1959 Supp.) 728.904. Subsequently, the Secretary allocated wheat acreage allotments for counties within the commercial wheat producing area; Saunders, the petitioner's county, received 33,804 acres of the Nebraska state allotment. 7 C.F.R. (1959 Supp.) 728.907.

In addition to a 200 acre reserve for appeals and corrections set aside from the Saunders county allotment, the Secretary set aside, from the Nebraska allotment, statewide reserves of 1,003 acres for appeals

and corrections, and 2,200 acres for new farms. 7 C.F.R. (1959 Supp.) 728.907.

In determining the base acreage for the 1959 wheat crop, the local county committees are required to establish for each farm, an "historical average acreage" which is in general terms, the average of the acreage of wheat reaching maturity in each of the years 1954, 1955, 1956, and 1957. 7 C.F.R. (1959 Supp.) 728.917 (a) and (b) (App., *infra*, p. 35a). The committee is permitted to adjust the historical average acreage if it decides that one or more of the years in the base period 1954-1957 should be eliminated for one of five specified reasons. Two of these reasons, numbers 4 and 5, are involved in the present case in that the wheat history acreage is:

> (iv) No longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the farm.
>
> (v) Not appropriate for 1959 because of a definitely established crop-rotation system being carried out on the farm. 7 C.F.R. (1959 Supp.) 728.917 (e) (1) (iv) and (v). (App., *infra*, p. 37a).

If the committee eliminates any of the four years from the base period, the average of the remaining uneliminated years constitutes the adjusted average acreage. If all four years are eliminated, the adjusted average acres is zero. If a farm's adjusted acreage is zero because all four years of the base period have been eliminated, the county committee may fix a new base acreage. So long as all of the years during the base period were eliminated for Reason 5, i.e., because of a "definitely established crop-rotation system," the

new base acreage may be as high as the total number of acres which, in 1958, were tilled or were part of a rotation system. However, if all of the years were eliminated for Reason 4, i.e., because of "a substantial change in the established crop-rotation system," the new base acreage may not exceed the "acreage indicated by cropland," which is the acreage which bears the same ratio to the farm's total cropland as the community's historical wheat acreage bears to the community's total cropland acreage. 7 C.F.R. (1959 Supp.) 728.917 (c) (3) (i), 7 C.F.R. (1959 Supp.) 728.911 (g) (App., *infra*, pp. 37a, 34a).

II. De novo review by local review committee, which is wholly separate from the county committees, is available to farmers who are dissatisfied with their allotments or quotas, so long as a written application for review is filed within fifteen days after the farmer's notice of allotment and quota was mailed to him. 7 U.S.C. 1363 (App., *infra*, p. 25a). The review committee's jurisdiction is limited to consideration of only those matters which the County committee could consider under the regulations. 7 C.F.R. (1959 Supp.) 711.12 (App., *infra*, p. 32a).

III. If the farmer is dissatisfied with the determination of the review committee, he may have the decision reviewed by either a United States District Court or a state court. 7 U.S.C. 1365 (App., *infra*, pp. 25a-26a). The scope of judicial review, however, is limited to questions of law. Consequently, the review is restricted to the administrative record, and, if the review committee's fact findings are "supported by evidence" they are "conclusive." 7 U.S.C. 1366 (App., *infra*, pp. 26a-27a). The Secretary has interpreted "evi-

dence" as "substantial evidence." 7 C.F.R. (1959 Supp.) 711.23 (App., *infra*, p. 33a).

IV. Petitioner owns and operates a 320 acre farm in Saunders County, Nebraska, of which 285 acres are used as cropland. For the crop year 1959, petitioner was allotted 44.3 acres for the production of wheat (R. 15). The County committee reached this figure, in accordance with the appropriate regulations, by first computing the petitioner's historical average acreage for the base period 1954-1957. Petitioner's wheat acreages for that period were 35 acres in 1954, 45 acres in 1955, 65 acres in 1956, and 33 acres in 1957. His historical average acreage was 44.5 acres. The committee adjusted his historical average acreage, on the basis of Reason 4, by eliminating the three lowest years, i.e., 1954, 1955, 1957 on the ground that they were "* * * no longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the farm" (R. 56). Accordingly, the petitioner's acreage allotment was based upon an adjusted average acreage of 65 acres rather than an historical average acreage of 44.5 acres. If the committee, on account of Reason 4, had also eliminated the fourth year of the base period, i.e., 1956, his adjusted average acreage would have been zero. The committee could set a new base acreage; however, the committee could not have set the new base acreage above 15 acres, since the limitation of "acreage indicated by cropland" for petitioner's farm in the community is 15 acres (R. 55). The committee could have adjusted petitioner's acreage upward to the extent of the cropland in the farm under Reason 5, "* * * because of a definitely established crop-rotation system being carried out on the farm," but only if

it involved "a substantial change in the acreage planted to wheat from year to year." 1959 Wheat Allotment County Handbook (1-Wheat-59) (Part 9), Section 25.C.3 (App., *infra*, p. 38a).

Petitioner appealed the county committee's determination to the review committee on the ground that insufficient consideration had been given to his crop-rotation system and conservation practices (R. 16-17). 7 U.S.C. 1363 (App., *infra*, p. 25a).

Petitioner's farm is hilly and highly susceptible to erosion. It is the family homestead. Prior to 1950 it was farmed by a tenant for approximately twenty years. At the end of the period it was badly eroded and severely cut up with ditches, gullies and ravines. This was brought about largely by excessive cropping with row crops. Petitioner took over the operation of the farm in 1950 and immediately endeavored to revive and improve the farm. He has filled in washed areas, sowed grasses, planted red clover and alfalfa as soil builders, eliminated soil depleting row crops, and fixed up the ditches (R. 33-37).

Petitioner is an alfalfa producer and is the largest supplier for the dehydrating mill at Leshara, Nebraska (R. 28). By 1954, the first year allotments were in effect, he had progressed to a point of having 210 acres of alfalfa, a good part of which was in no need of rotation (R. 24). He has achieved a high level of income through his operations (R. 50). His rotating crop with alfalfa is and has been wheat. There is an intelligent and practical basis for his rotation system. Row crops will wash his land and depreciate the value of his farm, whereas alfalfa and wheat do not. However, alfalfa will dehydrate the moisture to a depth of

28 to 30 feet in the subsoil, if it is not plowed up every four to six years. Conservation of water is a matter of serious consideration in eastern Nebraska. Wheat is a shallow root crop, takes a minimum amount of moisture to raise a crop and leaves the fields free to absorb moisture after harvest. By leaving the wheat in three years, the alfalfa roots rot out and petitioner can return to alfalfa. Wheat leaves the ground flat and firm for the heavy dehydrating equipment to work on. Using oats as a small grain leaves the fields weedy and costs petitioner a year's income. Petitioner plants alfalfa in wheat stubble, the stubble serving as protection for the land. Wheat is planted in the fall, oats are planted in the spring and is used only to follow row crops which are harvested late in the fall. Dr. M. D. Weldon of the University of Nebraska Agricultural Extension Service stated that he could think of no other cropping system on hilly ground which might produce as good and as dependable an income and at the same time conserve the soil. He further stated that [petitioner] should not have less than a third of his land in rotation (R. 52).

The review committee denied the petitioner's application for an increase in his base acreage. It decided that the county committee had properly adjusted the petitioner's historical average acreage to account for the "substantial change" in his crop-rotation system. It concluded that "in view of the above facts and knowing that the allotment program's purpose was to control wheat production by each producer taking his fair share of any reduction needed, we the review committee of Venue VII believe this farm has received fair consideration and allotted a higher base than the history justifies and cannot grant this appeal." (R. 59).

The petitioner then instituted suit in the United States District Court for Nebraska. 7 U.S.C. 1365 (App., *infra*, pp. 25a-26a). The district court in its opinion stated, among other things: "What wheat [the petitioner] grows is necessarily correlated with, and limited to, the problem of producing a successful alfalfa crop. Accordingly, the [petitioner's] wheat crop history should not be considered in determining his base wheat acreage." (R. 11). The district court remanded the case "* * * to the review committee with directions to make a determination of the plaintiff's base wheat acreage for his 1959 crop on the basis, not of his crop history as was done, but of his long-range crop-rotation system as instituted and now established on his farm." (R. 12).

The Court of Appeals reversed, stating, among other things: "* * * that Congress recognized the desirability, and perhaps the necessity, of local adjudication is evident from the very scheme of the Act with its array of county and review committees comprised of area farmers. But it does not follow that because the regulations have adjustment limitations, the local character of the Act's administration has been nullified and improperly restricted. * * *" (App., *infra*, p. 19a).

REASONS FOR GRANTING THE WRIT

(1) This case is of substantial national importance, since this Court has never interpreted the regulations and instructions of the Secretary of Agriculture as they relate to the provisions of the Agricultural Adjustment Act of 1938, as amended, for making a determination of an appropriate wheat allotment for a farmer.

(2) Each of the questions presented herein embodies important questions of Federal Law which have not been, but which should be, settled by this Court.

(3) The decision below should be reviewed, because it erroneously construed the policy and provisions of the Agricultural Adjustment Act of 1938, as amended.

(4) The decision below should be reviewed, because if it is allowed to stand, it will wipe out the right of farmer committees to make adjudications of fact, given them by 7 U.S.C. 1366 (App., *infra*, p. 26a).

(5) The decision below, if unreversed, will compel the abandonment of petitioner's established soil conservation and land protection system.

(6) The decision below should be reviewed, because it held valid the adjustment limitations of the Secretary of Agriculture, which serve as devices to work exclusions of crop-rotation systems. The Court below sought support in this Court's holding in *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604. If the decision is allowed to stand, it is high authority for as sweeping a grant of discretion to the Secretary under the Agricultural Adjustment Act of 1938, as under the Sugar Act of 1948.

(7) The Court below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

ARGUMENT

Petitioner's claim is that he has not received his proper share of the national wheat allotment. The case at bar does not involve wheat surpluses. Petitioner makes no objection to the county factor being

applied to a proper base, which he considers to be 125 acres, since that is what he would be raising in the absence of an allotment system. Under the regulations he would be permitted to plant approximately 85 acres. This would be his contribution toward minimizing wheat surpluses, and the percentage reduction applies to everybody equally. The reduction would interfere with his soil conservation and crop-rotation system, but it would not destroy it. Accordingly, this Court's opinions in *Wickard* v. *Filburn*, 317 U.S. 111, and *Rodgers* v. *United States*, 332 U.S. 371, are not in point.

We have no quarrel with the purposes of the Act, instead we draw upon them for support. We make no objection to the propriety of the Secretary's regulations based on crop-history to accommodate many, perhaps most, wheat farms. The thrust of our argument is directed at the situation where the taking of the factor of crop-history is unrepresentative of a farmer's planting practices and using crop-history is not appropriate in making a determination of a proper wheat base. It is not the hardships imposed by the Act that are resisted, it is the hardships imposed by the unwarranted interpretations of the Secretary.

Congress did not define crop-rotation practices, nor has the Secretary (R. 38). In the realm of crop-rotation practices the Department of Agriculture occupies no special position as a repository of expertness. It is common knowledge that State Agricultural Colleges with their extension services dominate the field. Congress gave the Secretary authority to determine the amount of the allotment to the county. Congress nowhere delegated to the Secretary authority to prescribe what crop-rotation systems he will consider, what ones he will exclude. The national interest was protected

by control of the allotment to the States and counties. 7 U.S.C. 1334(a) and (b) (App., *infra*, pp. 23a-24a).

It is our interpretation of the Act that the Secretary is given no authority by way of legislative delegation to issue legislative regulations for making a determination of allotments. He is charged with the responsibility of "enforcing" the provisions of the Act, and whatever regulations he may prescribe must place a correct interpretation on the policy, the five statutory factors and the other provisions of the Act, and he is not permitted to accomplish by indirection what he is not allowed to do directly. *Schaffer Transportation Co.* v. *United States*, 255 U.S. 83; *Social Security Board* v. *Nierotko*, 327 U.S. 358; *Fishgold* v. *Sullivan Drydock & Repair Corporation*, 328 U.S. 275; *United States* v. *Zazove*, 334 U.S. 602.

The framework set up by Congress is clear. It gave the Secretary full authority to determine and allocate the national allotment to the States, and the State allotment to the counties, largely on the basis of past acreage of wheat. At the farm level the factors are changed to provide for past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography. This is the area of conflict of interest. The very success of the plan depends upon the cooperation of the farmers, the prompt redress of grievances and the elimination of resentments. A safety-valve was provided by making the apportionment "* * * * by the Secretary, through the local committees * * *" 7 U.S.C. 1334 (c) (App., *infra*, p. 24a). 7 U.S.C. 1388 (App., *infra*, pp. 27a-28a). 7 C.F.R. 728.911 (d) (1), and (2) (App., *infra*, p. 33a). These committees are democratically elected and the Secretary is "directed" to utilize their services. 16 U.S.C. 590h(b)

(App., *infra*, pp. 28a-30a). Obviously, their function is not to be a facade for ex parte distributions, but to make necessary adjustments and to eliminate friction.

Congress saw even further, a second safety-valve was installed to take a proper case out of local politics and feeling, should they exist. Review committees of outside farmers, appointed by the Secretary, were established, and were given authority to adjudicate the facts. U. S. District Courts and state courts were given authority to scrutinize the actions of the review committee to see that the law was being carried out. Here for the first time appears the adversary proceeding at which an applicant may introduce evidence, make a record, and whereby the findings of fact found by the review committee must be supported by substantial evidence gathered from the whole record. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 7 C.F.R. (1959 Supp.) 711.23 (App., *infra*, p. 33a). Significantly, it is from the determination of the review committee that judicial review is afforded, which is the only place it is permitted under the Act.

Still further to protect its scheme from abuses and to silence that common argument that if one farmer is to be given more, other farmers must receive less, Congress provided that increases given by review committees should not affect the determination made for any other farmer. 7 U.S.C. 1368 (App., *infra*, p. 27a). The Secretary properly implemented this provision by creating county and state reserves. 7 C.F.R. (1959 Supp.) 728.907.

The Secretary was charged in the declaration of policy for the Act to encourage "soil building and soil-conserving crops and practices." 7 U.S.C. 1282 (App., *infra*, p. 22a). In making his allotment to the

counties he was charged to make adjustments "for the promotion of soil conservation practices." 7 U.S.C. 1334 (b) (App., *infra*, p. 24a). He was similarly charged in the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590g, 590h(b) (App., *infra*, pp. 28a, 28a-30a). Moreover, in making his allotments to farmers the command is "shall be apportioned * * * on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography." 7 U.S.C. 1334(c) (App., *infra*, p. 24a).

The Secretary's regulations recognize the existence of situations where crop-history is inappropriate in the making of determinations of individual allotments by providing for an adjusted average acreage of zero. The basic issue is whether the Secretary may include in his regulations and instructions limitations to adjustments that are merely devices to work the exclusion of crop-rotation systems from adjudication, when the adjusted average acreage is zero. 7 C.F.R. 728.917 (c) (3) (i), 1959 Wheat Allotment County Handbook (1-Wheat-59) (Part 9) Section 25.C.3 (App., *infra*, pp. 27a-38a, 38a).

The crucial facts are not in dispute and the fact on which the whole case turns was raised to the dignity of a judicial admission. Petitioner pleaded in Paragraph 11 of his petition as follows:

> "11. Plaintiff's plan of crop-rotation is and has been to rotate his alfalfa fields with wheat, plowing up the alfalfa every four to six years, and then leaving the wheat in for three years. His plan of crop-rotation conforms to the best practices of soil conservation." (R. 2).

Defendant admitted this paragraph in its answer (R. 6).

Petitioner sought relief against an agency of the United States in a manner to disturb the regulations of that agency least. He sought it under Reason 5, which provides for an adjustment in those cases where a farmer had a definitely established crop-rotation system. 7 C.F.R. 728.917 (c) (1) (v) (App., *infra*, p. 37*c*). Reason 5 is subject to a limitation as set out in the 1959 Wheat Allotment County Handbook (1-Wheat-59 (Part 9) Section 25.C.3. (App., *infra*, p. 38a), which directs that no adjustment shall be made unless there is "a substantial change in the acreage planted to wheat from year to year." Since petitioner's alfalfa fields are losing their productivity one after another, the amount of acreage necessary to be rotated will not be changed substantially. The effect of this interpretation is to exclude from consideration all definitely established crop-rotation systems except one kind. This accommodation is apparently for the benefit of summer-fallow farmers. This limitation is arbitrary because nowhere did Congress express a preference for any particular crop-rotation system or systems or show an intention to discriminate against the system of petitioner's.

Petitioner's rotation system begins with alfalfa, which remains in the earth for four to five years, is followed by wheat, which remains three years, and then a return is made to alfalfa. It takes seven or eight years to complete the cycle. Obviously, past acreage of wheat does not reflect his planting practices. If petitioner had planted his whole farm to alfalfa in 1952 and 1953, the base-history years, he would have accumulated no wheat history. Conversely, if he had planted his whole farm to wheat during these years, he would have had more wheat history than he needed.

It is self-evident, however, that farmers cannot farm in this manner when soil conservation, dependable income and good husbandry are the factors which control the making of their decision. An important matter for petitioner has always been to have the Leshara Dehydrating Mill as a satisfied customer for his alfalfa. Naturally he could not have large amounts of alfalfa for a period of years, and little or none for a succeeding period.

In the early years petitioner's requirements were substantially less than now. By 1954, the first year allotments were in effect, he had progressed to a point of having 210 acres of alfalfa, a good part of which was in no need of rotation (R. 24). But in 1954 he had a bad wheat base, amounting to 35 acres (R. 24). By 1956, when it was necessary for him to plant 65 acres of wheat, he had a 23 acre allotment (R. 24). He had 42 acres of wheat which was subject to the payment of heavy penalties. 7 U.S.C. 1340 (2) (App., *infra*, pp. 24a-30a). These penalties are ruinous to a farmer's income, and the record shows that he was subject to them every year with the exception of 1958. By 1957 his program had advanced to a point at which penalties were a sufficient deterrent for petitioner to hold up his rotation and take his chances on getting another alfalfa crop. By 1959 he faced the alternative of abandoning his conservation and crop-rotation practices and turning to some row crop like corn, which is also in surplus, or of testing the legality of the Secretary's interpretations.

The district court granted relief under Reason 4, 7 C.F.R. 728.917 (*c*) (1) (iv), (App., *infra*, p. 37a), holding in effect that whereas petitioner's crop-rotation system was established, since his demands for wheat

acres were greater now than formerly, because of the maturing of his alfalfa fields, it constituted a change in operations (R. 11). Under Reason 4, no adjustment can be made, if it will exceed "acreage indicated by cropland." 7 C.F.R. 728.917 (c) (3) (i) (App., *infra*, pp. 37a-38a). This limitation is not only arbitrary, it is without meaning and serves only as a device to work exclusions. Corn land, wheat land, soybean land, alfalfa land, milo land, clover land, in fact all of the tillable acres are added together in a community and divided by the wheat land to obtain a percentage, and then that percentage is applied against a farmer's cropland. It is easy to see that by throwing in all the other crops that are raised the percentage will be so low that adjustments are effectively denied. As one would expect, the percentage as applied to petitioner's farm results in a figure of 15 acres (R. 55). In *Kosdon* v. *Frick*, 148 F. Supp. 218, a preference was given to some farmers by the committee if they had ever raised cotton on the land in question. The court in effect stated that since no rotation system was involved, the distinction was arbitrary. The sum total of other farmers' wheat and other crop plantings have no bearing on petitioner's crop-rotation practices and consequently the limitation is unreasonable.

Whereas the words crop-rotation practices and topography appear repeatedly throughout the Secretary's regulations, the effect of the two enumerated limitations is effectively to exclude them from any real consideration. It seems to us that the only possible construction that can be placed on the provisions of the Act was that Congress intended that crop-rotation matters were to be adjudicated at the local level. We are not urging that the Secretary may not in the interest of good

administration reasonably limit the amount or extent of adjustments for an individual farm in a given year; our construction of the Act is that he may not create barriers to an adjudication of a crop-rotation system on the merits. Nothing appears in the Act to show that Congress intended to freeze allotments to the level of crop-history.

It is apparent that Congress recognized the needs of and the effective limits of Federal authority. Crop-rotation practices and conservation problems, such as petitioner's, can only be accommodated by adjudication at the local level. This Court has repeatedly seen the necessity of drawing an elastic line between the requirements of Federal control and those of the States and its citizens. In *Davis Warehouse Co.* v. *Bowles*, 321 U.S. 144, 154, the Court stated:

> "Nor should we rush the trend to centralization where Congress has not. It could never be more appropriate than now to heed the maxim reiterated recently by the court that 'the extension of federal control into these traditionally local domains is a "delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions."'"

City of Yonkers v. *United States*, 320 U.S. 685, 690; *Palmer* v. *Commonwealth of Massachusetts*, 308 U.S. 79, 84.

In the early case of *Morrill* v. *Jones*, 106 U.S. 466, the Court had under consideration a revenue law which provided that "all animals alive, specially imported for breeding purposes from beyond the seas, shall be admitted free (of duty) upon proof thereof satisfactory to the Secretary of the Treasury, and under such regu-

lations as he may prescribe." The Court said that the Secretary of the Treasury cannot, by regulations, confine the operation of the statute to animals of "superior stock" nor put into the body of the statute a limitation which Congress did not think it necessary to prescribe. *Waite* v. *Macy*, 246 U.S. 606; *Addison* v. *Holly Fruit Products*, 322 U.S. 607.

Under the provisions of the Act, at the farm level the needs of Federal control disappear so long as adjustments are made in good faith and for cause. The wholesome administration of the Act is adequately provided for. The Secretary requires representatives of the State office to review each and every allotment; they may revise or require revision of any allotment, and no allotment notice may be mailed until the allotment has been approved. 7 C.F.R. 728.914 (App., *infra*, p. 34a). Moreover, the Secretary reserves the right "to revoke or suspend any appointment" of a member of the review committee. 7 C.F.R. 711.4 (App., *infra*, p. 32a). In light of the above, a fair question arises of how much more authority must the Secretary assume to guarantee fair-play and to prevent abuses in enforcing the provisions of the Act. The Secretary's limitations on adjustments, which operates as a bar, are not only arbitrary but frustrate the farmer committees and his own staff in the performance of their duties. We submit that such an adjudication was clearly intended by Congress when it created review committees and gave them the power to find facts. Moreover, since the Secretary appoints the members of the review committee, he is in a position to be assured of their qualifications; since they are outsiders and not regular employees of the Department of Agriculture, they may manage a degree of disinter-

estedness; and since the State office always has a representative in attendance with expert qualifications, the committee is not without guidance as to proper form (R. 22, 53). But the review committee has no greater authority to make adjudications than the county committee. 7 C.F.R. 711.12 (App., *infra*, p. 32a). If the Secretary is afraid to trust the judgment of democratically elected committees, it seems strange that he is afraid to trust the judgment of committees selected by him.

The fact that petitioner inaugurated his rotation system before allotments were imposed; that he protested his allotment at the first opportunity, in 1953 (R. 22); that he reclaimed a farm that was washing away; that he voluntarily abandoned the raising of corn, which is the most profitable crop that can be raised in eastern Nebraska; that his farm as a whole does not produce crops that are in surplus, since the bulk of it has been and will be in alfalfa; that what he has done received the highest recommendation of a leading agronomist of the State of Nebraska; that what he did conforms to what the extension service of the College of Agriculture has urged farmers to do for 50 years; that through self-help he has achieved parity of income; that the inflexible interpretations of the Secretary have created a situation where a neighbor, E. L. Shriver, has total allotments of 28 acres in excess of his acres of land (R. 40); that his neighbors had the advantage of drawing on the allotment pool, when his demands were small in the early years of the allotment system; these are powerful facts, adduced in an adversary proceeding before the review committee, where by law, any relief given to petitioner would not reduce the quota of any other farmer. 7 U.S.C. 1368 (App., *infa*,

p. 27a). We submit that on the record it would be hard to find a farmer who has done more to carry out the purposes of the Act than has petitioner, or who would be more entitled to favorable consideration by a review committee free to adjudicate the matter on the merits. *N.L.R.B.* v. *Hearst Publications, Inc.*, 322 U.S. 111, 130; *Gray* v. *Powell*, 314 U.S. 402, 411; *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 139, 140.

Mr. Edward Hines, Chairman of the Saunders County ASC Committee, testified before the review committee that Mr. Shriver was given total acreage bases for wheat and corn of 291 acres on a 263 acre farm, strictly on the basis of his crop-history (R. 44); that "we couldn't give [petitioner] any more than we had given him" (R. 43); that they were "limited in what they could do" (R. 44).

It is apparent that the Court below was following this Court's opinion in *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604, in which the provisions of the Sugar Act of 1948 were construed. 7 U.S.C. 1115 (a), (b) and (c) (App., *infra*, pp. 30a-31a, 31a, 31a-32a). This Court accepted the "balance" struck by the Secretary in that case. The policies of the Sugar Act of 1948 were so broadly defined by Congress that their execution was clearly a matter for the administrative competence of the Secretary and his staff. The Secretary was instructed to make allotments in such a manner and in such amounts as to provide a "fair, efficient and equitable distribution." Moreover, he was only required to exercise his discretion "by taking into consideration" the particular factors. He was required to hold a hearing on notice to interested parties before he made his allotments. No opportunity for adjudication was provided for. The Secretary found

the facts. Judicial review was limited to the Court of Appeals for the District of Columbia.

In the Agricultural Adjustment Act of 1938, Congress legislated very differently. A policy was declared: factors were provided, and the command was that allotments to the farms "shall be apportioned" on that basis. This is far different from merely "taking into consideration" the factors. The weight to be given to the factors depends upon the facts established. Naturally, if facts are to be established, there must be an adjudication, and Congress provided a review committee to find the facts, not the Secretary. It provided judicial review on the complaint of a farmer as soon as he has made his record and received his findings of fact. Moreover, Congress reposed special confidence in farmer committees and "directed" the Secretary to make use of their services. It is hard to find anything in common between the Sugar Act of 1948 and the Agricultural Adjustment Act of 1938.

The Court's attention is invited to the fact that the district court never mentioned the limitation of "acreage indicated by cropland" in its opinion, although the court heard counsel on respondent's motion for rehearing (R. 14). While the Court below mentioned the limitation in it's opinion, it did not defend it, except to cite the *Roig* Case (App., *infra*, p. 16a). We contend that the case at bar does not deal with the Secretary's authority to curtail wheat surpluses, nor with the "balance" he struck to accomplish this purpose, nor with judicial substitution of judgment, nor with the wisdom, workability or fairness of his plan. It deals with the Secretary's refusal to allow an adjudication of fact under the provisions of the Act. The regulations of the Secretary, in effect, deny

petitioner the hearing given him by law. Surely, the intent of Congress when it created review committees was not simply to provide a convenient forum for the meaningless expression of pent-up grievances. On the contrary, we believe it was created to determine the facts, since that is what the law says.

There is not a shred of evidence in the record to show that petitioner has changed his practices since the base period. Furthermore, Mr. Hines testified that "the reason we gave him what we did was because we knew he is strictly a wheat and alfalfa farmer." (R. 54). This fact was admitted in the pleadings in district court (R. 2, 6). That his continuing "operation" called for increasing amounts of wheat is equally well established. There is no evidence in the record to contradict it.

While the Secretary is given the responsibility to frame suitable regulations, and it is his alone, it nowhere appears that Congress had a partiality for crop-history above good husbandry and good conservation practices. In fact, the evidence is all the other way. In terms of practical administration it is recognized that the first step in making a determination of allotments to farms must be largely ex parte, because of their number. As the Court below stated, "there must be some basis of allocation of acreage * * *" (App., *infra*, p. 16a). But by the same token it is just as obvious that Congress was seeking a method to eliminate the harshness of ex parte proceedings, in a proper case and upon a proper showing. Even the facts of practical administration support this view, inasmuch as Mr. Hines testified that the county committee had never inspected petitioner's farm, and that it inspected very few farms (R. 43).

According to the Secretary's regulations, respondent is driven to the position of declaring that petitioner's mistake in the past was in not growing more wheat. But petitioner is an alfalfa producer, using wheat for rotation. What conceivable advantage would there be to the United States Government or to the agricultural industry for him to raise more wheat than his requirements called for at the time!

In *Social Security Board* v. *Nierotko*, 327 U.S. 358, 369 this Court was faced with an interpretation by both the Social Security Board and Treasury that back pay was not wages under the Social Security Act. The Court stated as follows:

> "The Social Security Board and the Treasury were compelled to decide administratively, whether or not to treat 'back pay' as wages and their expert judgment is entitled, as we have said, to great weight. The very fact that judicial review has been accorded, however, makes evident that such decisions are only conclusive as to properly supported findings of fact. Both N.L.R.B. v. Hearst Publications, page 131, of 322 U.S., page 860 of 64 S.Ct., 88 L.Ed. 1170 and Gray v. Powell, page 411 of 314 U.S., page 332 of 62 S.Ct., 86 L.Ed. 301, advert to the limitations of administrative interpretations. * * * An agency may not finally decide the limits of its statutory power. That is a judicial function. * * * "
>
> "This is a ruling which excludes from the ambit of the Social Security Act payments which we think were included by Congress. It is beyond the permissible limits of administrative interpretation."

We submit that Congress did not intend to exclude long-range crop-rotation systems like petitioner's from

consideration, where crop-history furnishes no proper indication of an appropriate wheat base. The Secretary has exceeded his authority. Petitioner should be permitted to retain his rotation practices as other farmers are permitted to retain theirs.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 16,285

Review Committee, Venue VII, Commodity Stabilization Service, United States Department of Agriculture, Sitting in the City of Wahoo, Nebraska, in and for Saunders County,

Appellant,

vs.

Harold Willey,

Appellee.

Appeal from the United States District Court for the District of Nebraska.

[February 18, 1960.]

Before GARDNER, WOODROUGH and BLACKMUN, Circuit Judges.

BLACKMUN, Circuit Judge.

This case arises under the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. § 1281 et seq., hereinafter called "the Act." It comes to us by way of an appeal by the Review Committee of Saunders County,

Nebraska, from a final decision of the District Court setting aside that committee's refusal to disturb the County Committee's 1959 wheat acreage allotment for the farm of Harold Willey, a Saunders County farmer, and remanding the case to the Review Committee "with directions to make a determination of the plaintiff's base wheat acreage for his 1959 crop on the basis, not of his crop history as was done, but of his long range crop rotation system as instituted and now established on his farm." The District Court has jurisdiction under § 1365 of the Act.[1] The court did not stay the Review Committee's determination although it had power to do so under § 1367.

The appellee, whom we shall call the plaintiff, is the owner and operator of a 320 acre farm in Saunders County in eastern Nebraska. 285 of the acres in this half section are tillable or "crop acres."

There is little dispute about the basic facts and most of them are admitted in the pleadings. The farm in question is a family farm and had belonged to the plaintiff's father. It is hilly and susceptible to erosion. The plaintiff began to operate the farm himself in 1950. For about 20 years prior to that time it had been rented to tenant operators. During that 20 year period the farm, through unsuitable soil conservation practices and excessive planting of row crops, had become eroded and severely cut up with ditches and gullies. Since 1950 the plaintiff has endeavored to revive and improve the farm. He has filled in washed areas, sown grasses, planted red clover and alfalfa as soil builders, eliminated row crops, and fixed up the ditches. There is now only one ditch which is troublesome for farm operations.

The plaintiff is principally an alfalfa farmer and so describes himself. He has been the largest supplier for the alfalfa dehydrating plant at Leshara, Nebraska, 5 miles

[1] Statutory references are to sections as they appear in U.S.C. and U.S.C.A.

from his farm. In 1958 the plaintiff planted 248.8 acres of his farm to alfalfa and that entire crop went to this plant. Its next largest farmer-supplier in 1958 had only 70 acres in alfalfa. The plaintiff normally obtains 4 cuttings of alfalfa a summer, as compared with 3 for some producers in the area. His product is clean because he has planted his alfalfa in wheat stubble in the fall and this prevents weeds from getting a foothold. If alfalfa is planted in the spring on corn or with a nurse crop of oats, an alfalfa crop the first year is not customarily realized. The plaintiff's farm although hilly is not rought. This has enabled the heavy equipment required for cutting the crop and supplied by the dehydrating plant to get around the farm without difficulty.

Alfalfa will dehydrate the soil. The roots go down 20 to 25 feet and after a few years the soil becomes root locked. As a consequence, after about the fourth or fifth season, alfalfa should be plowed up and the crop rotated. In due time the roots then rot out. Wheat is a satisfactory rotation crop because it takes a small amount of moisture. An ideal arrangement for crop rotation on the plaintiff's farm would be to have it one-third in wheat and two-thirds in alfalfa at all times. Alfalfa dries the soil to a much greater depth than any other crop commonly grown in eastern Nebraska. Conservaton of water is a matter of serious consideration there.

Plaintiff's crop history shows the following:

Year	Wheat Allotment	Wheat Acres	Alfalfa Acres	Other Crop Acres
1951	Not in effect	35	65	185
1952	Not in effect	35	90	160
1953	Not in effect	35	159	91
1954	29	35	210	40
1955	24	45	228	12
1956	23	65	220	0
1957	23	33	252	0
1958	44.2	36.2	248.8	0

The plaintiff probably would have planted more wheat acres during the wheat allotment years if it had not been for the allotment system. He filed a protest in 1953, the first year allotments were being made, against his acreage allocation. The plaintiff's plan of crop-rotation is to alternate his alfalfa with wheat, plowing up the alfalfa every 4 to 6 years and leaving wheat in for 3 years. This plan conforms to the best practices of soil conservation and steady income.

There is nothing in the record to suggest that the plaintiff is anything but an industrious and effective farm operator. His plea for more wheat acreage is evidently based upon a conviction that, so far as his particular farm is concerned, wheat-alfalfa rotation is the best and, for him, the most productive system. There is an intelligent and practical basis for his crop-rotation plan.

Because this is the first case under § 1365 to reach this court, it seems worthwhile, at the risk of lengthening this opinion, initially to review the pertinent and complex provisions of the Act and their administrative interpretation and application for the year 1959, and thus better to grasp the positions of the respective parties here.

§ 1282 is the declaration of Congressional policy. It remains in its original 1938 form and reads in its entirety:

> "It is declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly,

adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices."

Further policy references directed specifically to wheat are in the legislative findings of § 1331.[2] § 1332 directs the Secretary of Agriculture by May 15 of each calendar year to ascertain and proclaim the national acreage allotment for the crop of wheat produced in the next succeeding calendar year. This allotment is defined as that acreage

[2] "Abnormally excessive and abnormally deficient supplies of wheat on the country-wide market acutely and directly affect, burden, and obstruct interstate and foreign commerce. • • •

"It is in the interest of the general welfare that interstate and foreign commerce in wheat and its products be protected from such burdensome surpluses and distressing shortages, and that a supply of wheat be maintained which is adequate to meet domestic consumption and export requirements in years of drought, flood, and other adverse conditions as well as in years of plenty, and that the soil resources of the Nation be not wasted in the production of such burdensome surpluses. • • •

"The conditions affecting the production and marketing of wheat are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of such surpluses and shortages and the burdens of interstate and foreign commerce resulting therefrom, maintain normal supplies of wheat, or provide for the orderly marketing thereof in interstate and foreign commerce.

"The provisions of sections 1331-1339 • • • affording a cooperative plan to wheat producers are necessary in order to minimize recurring surpluses and shortages of wheat in interstate and foreign commerce, to provide for the maintenance of adequate reserve supplies thereof, and to provide for an adequate flow of wheat and its products in interstate and foreign commerce. The provisions hereof for regulation of marketings by producers of wheat whenever an abnormally excessive supply of such commodity exists are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions."

which, on the basis of the national average yield for wheat, will produce an amount adequate, together with estimated carry-over at the beginning of the year and imports, to make available a supply equal to a normal year's domestic consumption and exports plus 30 percent. The national acreage allotment for wheat for any year shall not be less than 55 million acres. § 1333.

The national wheat acreage is then, under § 1334, apportioned by the Secretary among the states, the allotment to each state is apportioned among its counties, and the allotment to each county is apportioned by local farmer committees[3] among the farms in the county. Different criteria govern the apportionment of the respective wheat allotments among the states, the counties and the farms. In making the state allotments, the Secretary, after a 1 percent reserve, is required to allocate "on the basis of the acreage seeded for the production of wheat" during the immediately preceding 10 years "with adjustments for abnormal weather conditions and for trends in acreage during such period." In distributing the state allotment among the counties, the Secretary's apportionment, after a reserve of up to 3 percent, is again "on the basis of the acreage seeded for the production of wheat" during the prior 10 years but "with adjustments for abnormal weather conditions and trends in acreage during such period and for the promotion of soil-conservation practices." The allotment among the individual farms, made through the local committees, is then on "base acreage" which depends upon "past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography." § 1334 (a) (b) and (c).

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[3] These committees, which are comprised of three farmers elected by the farmers of the county, are, under § 1388(a), the same local committees utilized in the administration of the Soil Conservation and Domestic Allotment Act of 1935, 45 Stat. 1151 as amended, 16 U.S.C. § 590 h (b).

When the Secretary determines that the total supply for the coming wheat marketing year (July 1 - June 30, § 1301 (b) (7)) will exceed "the normal supply for such marketing year by more than 20 per centum" he is required to "proclaim such fact" and then a "national marketing quota shall be in effect with respect to the marketing of wheat." § 1335 (a). That quota will be suspended, however, if more than one-third of the farmers voting in a referendum, which the Secretary must conduct by July 25, oppose the quota. § 1336. A penalty is imposed on any "farm marketing excess of wheat." § 1340.

All acreage allotments and the farm marketing quotas established for farms in the county are available for public inspection and notices of the farm marketing quota and of the farm acreage allotment are mailed to the farmer. § 1362. Any farmer who is dissatisfied with his quota may, within 15 days after the mailing of notice to him, have the quota reviewed by a review committee consisting of three farmers appointed by the Secretary from the same or nearby counties. The persons comprising the review committee must be different from those on the county committee. § 1363.[4] If the farmer is dissatisfied with the determination of the review committee, he may, within 15 days after notice, file a "bill in equity" against the review committee in the United States district court or institute proceedings for review in a proper State court. § 1365. This court review "shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive." § 1366. "Notwithstanding any increase of any farm marketing quota for any farm as a result of review of the determination

[4] This section refers only to "farm marketing quota" and not to "farm acreage allotment." Because of the interdependence of these terms and because the parties make no point of the absence of reference to "farm acreage allotment," we, for purposes of this case, regard the statute as authorizing review of acreage by the review committee.

thereof under sections 1361-1368 * * * *, the marketing quotas for other farms shall not be affected." § 1368. By § 1375(b) the Secretary "shall prescribe such regulations as are necessary for the enforcement" of the Act.

We turn now to the year 1959. In March, 1958 the Secretary proclaimed that a marketing quota would be in effect for the 1959-60 wheat marketing year. 23 F.R. 1984, 7 C.F.R. (1959 Supp.) 728.902. The applicable facts resulted in the setting of the 1959 national acreage allotment at the 55 million acre statutory minimum. 7 C.F.R. (1959 Supp.) 728.903. Allocation of acreage among the states followed and Nebraska received 3,204,664 acres. 23 F.R. 1985, 7 C.F.R. (1959 Supp.) 728.904. Saunders County, Nebraska, then received 33,804 acres of the state allotment. 7 C.F.R. (1959 Supp.) 728.907. The referendum held June 20, 1958 among wheat producers favored the quota by more than the required two-thirds percentage and the quota remained in effect. 7 C.F.R. (1959 Supp.) 728.909.

The Secretary in due course issued regulations with respect to the 1959 wheat crop. These required the county committees to establish for each farm, in determining its 1959 base acreage, an "historical average acreage" which approximated the average of the acreage of wheat reaching maturity in each of the years 1954-1957, inclusive. 7 C.F.R. (1959 Supp.) 728.912(m), 728.917(b). The committee could then adjust this historical average acreage if it decided that one or more of the years in the four-year base period should be eliminated for any one of five specified and numbered Reasons. (The first three Reasons stated are not applicable to this case.) The fourth and fifth Reasons (23 F.R. 1672, 7 C.F.R. [1959 Supp.] 728.917 [e] [1]) have to do with the situation where the historical average wheat acreage is:

> "(iv) No longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the farm.

"(v) Not appropriate for 1959 because of a definitely established crop-rotation system being carried out on the farm."

If the committee eliminates any of the four years from the base period the average of the remaining years constitutes the adjusted average acreage; if all four years are eliminated the adjusted average acreage is zero. 7 C.F.R. (1959 Supp.) 728.917(c)(2). In the latter case the committee may fix a new base acreage comparable with those acreages for farms which are similar with respect to tillable acres, type of soil and topography and which are similarly operated with respect to the rotation of crops, 7 C.F.R. (1959 Supp.) 728.917(c)(3). If, however, all the years in the period are eliminated under Reason (v), the adjusted average acreage may be adjusted upward but not above "the acreage of cropland for the farm." If the adjusted average acreage is zero because one or more of the years in the base period is eliminated by Reason (iv), the adjusted average acreage may be adjusted upward but not to exceed "the acreage indicated by cropland." 7 C.F.R. (1959 Supp.) 728.917(c)(3)(i). "Acreage indicated by cropland" means the number of acres computed by multiplying the cropland acreage for a farm by the ratio of historical wheat acreage for all farms in the community to the cropland acreage for those farms. 7 C.F.R. (1959 Supp.) 728.911(g).

On June 10, 1958, the Saunders County Committee issued to the plaintiff a written notice that his wheat allotment for the 1959 crop year was 44.3 acres. It reached this figure in the following manner: The plaintiff's wheat acreage history for the base period 1954-1957, as set forth above, showed an average of 44.5 acres. If the county acreage allotment had been applied pro rata to this figure, the plaintiff's farm would have received a final allotment of 30.3 acres. The Committee, however, on the basis of Reason (iv), eliminated the three lowest years, 1954, 1955

and 1957. The plaintiff's adjusted average acreage was thus set at 65 acres attributable to 1956 alone. This resulted, on the pro rata basis, in the 1959 allotment of 44.3 acres. The plaintiff filed a timely application for review.

At the hearing before the review committee the Chairman of the County Committee testified that in determining allotments in Saunders County his committee considered only crop history although they "are supposed to take into consideration the topography and the farming methods and setup." A portion of the contents of the 1959 Wheat Allotment County Handbook, supplied by the Department of Agriculture to the County Committee, was placed in evidence. This refers to the reasons for adjustment of historical acreages and reads:

> "2. CHANGE IN CROP ROTATION. No adjustments should be made for Reason 4, unless it is definitely known that a change in operations on the farm has occurred which will change the crop-rotation system that was practiced during the base period to a crop-rotation system that is to be followed in 1959. * * * *
>
> "3. ESTABLISHED CROP-ROTATION. No adjustment shall be made for Reason 5 unless it is known that there is a definite crop-rotation system followed on the farm which involves a substantial change in the acreage planted to wheat from year to year. Adjustments properly made under this reason for 1958, * * * will generally necessitate compensating adjustments for 1959 to conform with the rotation being followed on the farm; and similarly, adjustments made under this reason for 1959 will necessitate compensating upward or downward adjustments for subsequent years."

A University of Nebraska agronomist testified that by sowing alfalfa in wheat stubble a much better stand is acquired than if it is sown with oats in the spring; that on the basis of plaintiff's figures alfalfa would be more prof-

itable than almost any other crop; that from the standpoint of soil conservation and steady income wheat and alfalfa are an excellent rotation; that apart from soil erosion and consequent land depletion, corn in the long run would be more profitable than wheat or alfalfa; that he knew of no other cropping system on hilly land which might produce as good and as dependable an income and at the same time conserve the soil as wheat and alfalfa; and that he would not say that plaintiff should have less than one-third of his land in rotation. There is some indication in the record that no one else in Saunders County was in the same position as the plaintiff and that other farmers with the same acreage have a greater wheat allocation than plaintiff because of their greater wheat acreage history. The review committee concluded that the purpose of the allotment program "was to control wheat production by each producer taking his fair share of any reduction needed" and that the "plaintiff's farm had received fair consideration and allotted a higher base than the history justifies." The plaintiff then filed a timely complaint with the district court.

The plaintiff's position may perhaps fairly be stated as follows: The statutory policy enunciated in § 1282 is self-explanatory and its emphasis upon soil conservation, soil conserving crops and practices, and parity of income are meaningful. The factor of soil conservation stressed in § 1334(b) and the five factors spelled out in § 1334(c) are all to be given effect and allocations are not to be made solely on past acreage. Plaintiff is not a producer of surpluses and he takes his share of the reduction in the percentage factor. His rotation is intelligent and proper. It was established in 1951. Reason (v) controls. His early small wheat plantings do not contra-indicate this for he was hemmed in by severe penalties for excess acreage. The county committee allotment in effect penalizes him for not growing wheat in the past. The limitation under Reason

(iv) of "acreage indicated by cropland" is arbitrary and unreasonable.

The committee's position is that the county committee and the review committee did the very best they could for this farmer. The plaintiff's rotation system represented a substantial change in the established crop-rotation system for the farm and Reason (iv) controls. Reason (v) cannot control because, while there may be a definitely established crop-rotation system being carried out on the farm, it does not involve "a substantial change in the acreage planted to wheat from year to year." The county committee was most generous in not eliminating from the base the high year of 1956. If 1956 had also been eliminated, plaintiff would have a zero base and "acreage indicated by cropland" would be his upper limit. This, for Saunders County, should be 15 acres in his case. This limitation and the regulations are valid.

The trial court held that Reason (v) was not available to the plaintiff because there was no substantial annual change in the acreage planted to wheat; that, however, all the years, and not just three, in the base period should have been eliminated; that, having adopted and put into practice a long-term crop rotation system, plaintiff is now required to allocate a larger acreage of his farm to the growing of wheat; that in this light he is not a producer of wheat surpluses; that his wheat crop history should not be considered in determining his base wheat acreage; that upon an adjusted average acreage of zone the plaintiff's base wheat acreage may be adjusted to compare with systems employed on other farms similarly situated and having the same problems; and that once this is done "justification will be found under the regulations for a greater base acreage than has been allowed." No reference was made by the court in its memorandum to the "acreage indicated by cropland" limitation, under Reason (iv), contained in 7 C.F.R. (1959 Supp.) 728.911(g).

The question of mootness perhaps should initially be mentioned inasmuch as the plantings of the 1959 crop year in Nebraska have already been made. We feel that the case is not moot. This is because of the existence of possible penalties and because of the use of 1959 as one of the base period years in connection with the 1960 wheat crop. § 1334(c) and 24 F.R. 2475.

The constitutionality of the Act has been upheld as being well within the powers granted Congress by the Commerce Clause of the Constitution, Article I, § 8, clause 3: *Wickard* v. *Filburn*, 317 U.S. 111, 118 et seq., 64 S.Ct. 82; *Mulford* v. *Smith*, 307 U.S. 38, 48, 59 S.Ct. 648, and as not violative of either the Due Process Clause of the Fifth Amendment, *Wickard* v. *Filburn*, p. 129 et seq. of 317 U.S., *Mulford* v. *Smith*, page 49 of 307 U.S., *Corpstein* v. *U. S.*, 10th Cir., 262 F.2d 200, cert. den., 359 U.S. 966, 79 S.Ct. 877, or of the guarantee of religious freedom under the First Amendment, *U. S.* v. *Kissinger*, 3rd Cir., 250 F.2d 940, 942-3, cert. den. 356 U.S. 958, 78 S.Ct. 995, or of the Tenth Amendment's reservation of powers to the states, *Shafer* v. *U. S.*, 4th Cir., 229 F.2d 124, 129, cert. den. 351 U.S. 931, 76 S.Ct. 788. See also *Secretary* v. *Central Roig Refining Co.*, 338 U.S. 604, 70 S.Ct. 403, which concerned the comparable Sugar Act of 1948, 7 U.S.C. §1100, et seq. And "once the question of constitutional power is answered in the affirmative the wisdom, need and effectiveness of a particular statute enacted in the exercise of that power is a question for the Congress not the courts." *U. S.* v. *Kissinger*, supra, p. 942 of 250 F.2d, *Wickard* v. *Filburn*, supra, page 129 of 317 U.S. That an inequitable result is forthcoming does not render the statute unconstitutional. *Wickard* v. *Filburn*, supra, p. 130 of 317 U.S.; *Shafer* v. *U. S.*, supra, p. 129 of 229 F.2d.

We feel, then, that this case comes down to two questions: (1) are the administrative interpretations of the statute valid, and (2) have they been properly applied to the plaintiff's situation.

It is apparent from a reading of the policy provisions of the Act, and indeed from the mechanical provisions as well, that, as the plaintiff claims, the Act evinces a desire on the part of Congress as a matter of policy to preserve our national farm resources and to encourage soil rebuilding and soil conserving practices such as proper crop-rotation, and the attainment of "parity of income" for the farmer. On the other hand it is equally evident that the Congress has deemed it to be in the best interests of the nation that abnormally excessive surpluses (and abnormally deficient supplies) be prevented. This has been specifically recognized by the Supreme Court when it said in *Wickard* v. *Filburn*, p. 115 of 317 U.S., that "the general scheme" of the Act is "to control the volume moving in interstate and foreign commerce in order to avoid surpluses and shortages and the consequent abnormally low or high wheat prices and obstructions to commerce", and in *Rodgers* v. *U. S.*, 332 U.S. 371, 374-5, 68 S.Ct. 5;

> "In fact, the whole philosophy of the Agricultural Adjustment Act is based on the theory that the public will be benefited, not damaged, if farmers produce and market within these quotas, thereby avoiding the payment of penalties. The framework of the Act itself, both as originally passed and as amended, and the reports of the congressional committees that drafted it, show a prime purpose to limit national and individual farm production and marketing to the quotas allotted. * * * "

It is well settled, of course, that administrative construction of an Act is entitled to great weight. *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 391, 79 S.Ct. 818, 823; *Federal Housing Administration* v. *Darlington, Inc.*, 358 U.S. 84, 79 S.Ct. 141, 145; *U. S.* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 549, 60 S.Ct. 1059, 1067. Regulations are to be sustained unless unreasonable and plainly inconsistent with the statute and they are not to be overruled except for weighty reasons. *Commissioner*

v. *South Texas Lumber Co.*, 333 U.S. 496, 501, 68 S.Ct. 695; *Fawcus Machine Co.* v. *U. S.*, 282 U.S. 375, 378, 51 S.Ct. 144; *Hart-Bartlett-Sturtevant Grain Co.* v. *Commissioner*, 8th Cir., 181 F.2d 153, 158; *Halpin* v. *Collis Company*, 8th Cir., 243 F.2d 698, 704. This principle applies to regulations issued under the Act. *Gardner* v. *U. S.*, 5th Cir., 239 F.2d 234, 237; *Edwards* v. *Owens*, D.C. E.D. Mo., 137 F. Supp. 63, 65. One claiming that a regulation is invalid has the heavy burden to "make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress." *Boske* v. *Comingore*, 177 U.S. 459, 470, 20 S.Ct. 701, 706; *Gardner* v. *U. S.*, 5th Cir., supra, p. 237 of 239 F.2d; *Fulford* v. *Forman*, D.C. N.D. Tex., 144 F.Supp. 536, 540, affirmed, 5th Cir., 245 F.2d 145; *Ralph Knight, Inc.* v. *Mantel*, 8th Cir., 135 F.2d 514, 517. Regulations, however, cannot be arbitrary. They must have a basis in the statute and be within the authority granted the administrative agency. *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 64 S.Ct. 1215; *Social Security Board* v. *Nierotko*, 327 U.S. 358, 66 S.Ct. 637; *Morrill* v. *Jones*, 106 U.S. 466, 1 S.Ct. 423.

After a careful review of the Secretary's regulations directed to the 1959 wheat crop we can conclude only that they embody a reasonable administrative interpretation of the statute, that they are not arbitrary or unreasonable, and that they are valid. One cannot say that these regulations are simple. They are, it seems to us, extraordinarily complex. But so indeed is the statute itself.[5] Complexity,

[5] The Fifth Circuit has characterized the parallel cotton provisions of the Act as "a legislative structure * * * abstruse" that "sets forth formula which, to the tutored, reflects the product hammered out in the legislative process, but to the uninitiated, appears to be an unintelligible stream of words. * * *." *Fulford* v. *Forman*, supra, p. 149 of 245 F.2d.

however, is not synonymous with arbitrariness, unreasonableness, or invalidity. We feel that the administrative interpretations applicable here represent in their entirety a reasoned and reasonable administrative effort to implement the statute fairly.

Past acreage, of course, is one of the factors taken into consideration; this is specifically mentioned in §1334(c).[6] There must be some basis of allocation of acreage and the historical factor which takes into consideration each producer's past share of the market, while it may be somewhat offensive to new farms and to lands not devoted to wheat during the base period, is not an arbitrary or unreasonable factor to employ. This, in fact, is implicit in the Supreme Court's holding in *Secretary* v. *Central Roig Refining Co.*, supra, 338 U.S. 604, 612, 614, 618.

The same may be said with respect to the requirement, applied to Reason (v), that there be a substantial change in the acreage planted to wheat from year to year and to the application of the "acreage indicated by cropland" limitation, 7 C.F.R. (1959 Supp.) 728.911(g), to the situation where all years in the base period are eliminated under Reason (iv). Parallel with and paraphrasing what was said in the *Roig* case, p. 614 of 338 U.S., we would have to say here, if we were to hold the applicable administrative interpretations invalid, that the Secretary's judgment must be replaced with our own and that it is not for us to reject the balance he struck "unless we can say that his judgment is not one that a fair-minded tribunal with specialized knowledge could have reached." As the Supreme Court said there, so we conclude: "This we cannot say."

This takes us to the second question having to do with the application of the statute and the regulations, which

[6] The factor of "past acreage of wheat" was not specified in the Act as originally adopted but came into the Act by the 1953 amendment. 67 Stat. 151, Chapter 194.

we have found to be valid, to this plaintiff. The Review Committee is the trier of fact. Its findings, if supported by substantial evidence, are conclusive. § 1366. *Crolley* v. *Tatton*, 5th Cir., 249 F.2d 908, 911; cert. den. 356 U.S. 966, 78 S.Ct. 1005. And "substantial evidence" in these cases under the Act does not mean proof beyond a reasonable doubt but only such relevant evidence as a reasonable mind might accept to support a conclusion, *Lee* v. *DeBarry*, 219 S.C. 382, 387; 65 S.E. 2d 775, 777, or, as the same court has described it, "competent evidence". *Lee* v. *Berry*, 219 S.C. 346, 352; 65 S.E. 2d 257, 259; *Mace* v. *Berry*, 225 S.C. 160, 171, 81 S.E. 2d 276, 280. And " * * * it is not the Court's function to substitute its judgment for that of the Review Committee where the Committee has applied the broad phrases" in the regulations "to a specific set of facts," and there is substantial evidence to support its conclusions. *Lee* v. *DeBerry*, supra, p. 780 of 65 S.E. 2d; *Luke* v. *Review Committee*, D.C., W.D. La., 155 F.Supp. 7[illegible], 723.

We consider then (a) the rejection of the applicability of Reason (v); (b) the acceptance of Reason (iv); (c) the elimination of 1954, 1955 and 1957 from the base year period and the retention of 1956; and (d) the alleged failure of the County Committee to take into consideration all five factors specified in § 1334(c). We agree with the trial court that Reason (v) is not applicable to the plaintiff's situation and that this is so because his crop rotation system does not involve "a substantial change in the acreage planted to wheat from year to year" but, instead, contemplates a more or less constant wheat acreage characterized by desired devotion of different areas of his farm to wheat in each passing year.

To have Reason (iv) apply, it must be shown that the wheat history acreage is "no longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the

farm." Irrespective of the reasons therefor—and they may well have been practical reasons of necessity prompted by overhanging penalties or by the difficulties of transforming his farm operation from row crops to alfalfa—the fact is that plaintiff's acreage in wheat in all the years 1952-1958 inclusive was far less than one-third (or 95) of his 285 tillable acres which he now wants devoted to wheat. That the plaintiff may have had his system of crop rotation in mind or even "in effect" as early as 1950 does not mean, in the light of the acreage facts here, that his operations implementing that scheme did not reflect "a substantial change" within the scope of Reason (iv). His desired rotation system, therefore, factually represents a departure from prior practice equivalent to a substantial change in the theretofore established system from that practiced during the base period. These facts qualify as evidence sufficient to support the committee's finding that Reason (iv) is applicable.

We agree also with the conclusions of the County Committee, the Review Committee, and the trial court that the years 1954, 1955 and 1957 might properly be eliminated under Reason (iv). The two committees on the one hand and the district court on the other differed as to the retention of 1956. We agree here with the committees and disagree with the trial court. We do so because it seems to us that it is a permissible and reasonable conclusion to draw that 1956 and 1959 do not present, as between themselves, "a substantial change" in the rotation system.

So far as the five factors specified in § 1334(c) are concerned, we feel that the record in substance shows that all have been given consideration by the committees and that this is so despite the County Committee Chairman's statement, on examination by the plaintiff's attorney, that his committee was then considering nothing except crop history. It was brought out through the same witness that some consideration was given to rotation practices, that

the committee knew the plaintiff was strictly a wheat and alfalfa farmer; that "we gave what we could, we went as far as we dared to go," that "this farm is higher than most in the county," and that "we couldn't give him any more than what we had given him."

We do not overlook the practical result here. The retention of 1956 alone gave plaintiff a greater average base than would have been the case if any other year or years of the base period had been retained, or if all the years had been eliminated under Reason (iv), for then the 15 acre maximum under "acreage indicated by crop land" would apply. One may, therefore, conclude that the committees were perhaps over generous to the plaintiff. The defendant makes no objection to the retention of 1956 with consequent greater average acreage, and we, therefore, do not upset its retention. We regard this as a very different situation than that of *Kosden* v. *Frick*, D.C. S.D. Cal., 148 F. Supp. 218, urged upon us by the plaintiff.

We should note that the plaintiff argues that crop-rotation practices and conservation problems can best be adjudicated at the local level, and that if the Secretary's regulations prevent this, they are arbitrary and beyond the proper limits of administrative interpretation. It may well be that problems of this kind may best be handled at the local level. That Congress recognized the desirability, and perhaps the necessity, of local adjudication is evident from the very scheme of the Act with its array of county and review committees comprised of area farmers. But it does not follow that because the regulations have adjustment limitations, the local character of the Act's administration has been nullified and improperly restricted. Indeed, as we have noted, we feel the County and Review Committees have been far more generous with plaintiff's allotment than they might have been, within the ambit of the statute and the regulations, or than this court might have been were it adjudicating the facts.

We feel, then, in conclusion, that there was no error in the Review Committee's retention of the year 1956 in the base period and in its consequent calculation of 44.3 acres as the plaintiff's 1959 wheat acreage allotment. That the plaintiff finds himself with a smaller allotment than would be his had he been producing wheat on a more extensive scale in prior years, that he finds himself at a comparative disadvantage, because of the past acreage factor, with certain other farmers of his locality having farms of comparable size, that the restriction is inconvenient and not to his liking, that he is unable to use to its full extent and without possible penalties the crop rotation scheme of his choice but may be required, instead, to utilize a rotation scheme less appealing to him, are natural but not illegal results of regulation imposed by the legislative process to fill a need which Congress has found to exist. As the Supreme Court has said in *Wickard* v. *Filburn*, supra, p. 129 of 317 U.S.:

> "It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process. Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do."

and in *Secretary* v. *Roig*, supra, p. 619 of 338 U.S.:

> "The Act may impose hardships here and there; the incident of hardship may shift in location and intensity. It is not for us to have views on the merits of this legislation."

The problems of surplus and of deficits are common to all farmers. Sharing of reductions, though inequities be present, is a basic concept of the Act. The plaintiff, we feel,

must live with it and with the regulations which have been promulgated for 1959.

Reversed and remanded with instructions to affirm the Review Committee's determination.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

(Judgment)

UNITED STATES COURT OF APPEALS
FOR THE
EIGHTH CIRCUIT

No. 16285 - - - - - September Term, 1959

REVIEW COMMITTEE, VENUE VII, COMMODITY STABILIZATION SERVICE, United States Department of Agriculture, Sitting in the City of Wahoo, Nebraska, in and for Saunders County.

Appellant,

vs.

HAROLD WILLEY

Appeal from the United States District Court for the District of Nebraska.

This cause came on to be heard on the record from the United States District Court for the District of Nebraska, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further Ordered by this Court that this cause be, and it is hereby, remanded to the said District Court

with instructions to affirm the determination of the Review Committee.

February 18, 1960

Statutes Involved

7 U.S.C. 1282 provides:

DECLARATION OF POLICY.

"It is declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices.

7 U.S.C. 1332 provides:

PROCLAMATIONS OF ALLOTMENTS.

Not later than May 15 of each calendar year the Secretary shall ascertain and proclaim the national acreage allotment for the crop of wheat produced in the next succeeding calendar year.

7 U.S.C. 1333 provides:

NATIONAL ACREAGE ALLOTMENT.

The national acreage allotment for any crop of wheat shall be that acreage which the Secretary determines will, on the basis of the national average yield for wheat, produce an amount thereof adequate, together with the estimated carry-over at the beginning of the marketing year for such crop and imports, to make available a supply for such marketing year equal to a normal year's domestic consumption and exports plus 30 per centum thereof. The national acreage allotment for wheat for 1938 shall be sixty-two million five hundred thousand acres. The national acreage allotment for wheat for any year shall be not less than fifty-five million acres.

7 U.S.C. 1334 provides in pertinent part:

APPORTIONMENT OF NATIONAL ACREAGE ALLOTMENT.

(a) APPORTIONMENT AMONG STATES; OVERPLANTED ALLOTMENTS.

The national acreage allotment for wheat less a reserve of not to exceed one per centum thereof for apportionment as provided in this subsection, shall be apportioned by the Secretary among the several States on the basis of the acreage seeded for the production of wheat during the ten calendar years immediately preceding the calendar year in which the national acreage allotment is determined (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs) with adjustments for abnormal weather conditions and for trends in acreage during such period: * * *

(b) APPORTIONMENT AMONG COUNTIES; OVERPLANTED ALLOTMENTS.

The State acreage allotment for wheat, less a reserve of not to exceed 3 per centum thereof for apportionment as provided in subsection (c) of this section, shall be apportioned by the Secretary among the counties in the State, on the basis of the acreage seeded for the production of wheat during the ten calendar years immediately preceding the calendar year in which the national acreage allotment is determined (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and and trends in acreage during such period and for the promotion of soil conservation practices: * * *

(c) APPORTIONMENT AMONG FARMS; OVERPLANTED ALLOTMENTS.

The allotment to the county shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography. Not more than 3 per centum of the State allotment shall be apportioned to farms on which wheat has not been planted during any of the three marketing years immediately preceding the marketing year in which the allotment is made. * * *

* * * * * * * * *

7 U.S.C 1340 provides in pertinent part:

SUPPLEMENTAL PROVISIONS RELATING TO WHEAT MARKETING QUOTAS; MARKETING PENALTY FOR RICE; CROP LOANS ON COTTON, WHEAT, RICE, TOBACCO, AND PEANUTS.

* * * * * * * * *

(2) During the marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of the penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1st of the calendar year in which the crop is harvested.

* * * * * * * * *

7 U.S.C. 1363 provides:

REVIEW OF QUOTA; REVIEW COMMITTEE.

Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in Section 1362 of this title, have such quota reviewed by a local review committee composed of three farmers from the same or nearby counties appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

7 U.S.C. 1365 provides:

INSTITUTION OF PROCEEDING FOR COURT REVIEW OF COMMITTEE FINDINGS.

If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the state having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount

and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

7 U.S.C. 1366 provides:

COURT REVIEW.

The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may em proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court deter-

mines that such determination or modified determination is not in accordance with the law, the court, shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

7 U.S.C. 1368 provides:

EFFECT OF INCREASE ON OTHER QUOTAS.

Notwithstanding any increase of any farm marketing quota for any farm as a result of review of the determination thereof under section 1361-1368 of this title, the marketing quotas for other farms shall not be affected.

7 U.S.C. 1375 provides:

REGULATIONS.

. . . . . .

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this chapter.

7 U.S.C. 1388 provides in pertinent part:

UTILIZATION OF LOCAL AGENCIES.

(a) The provisions of section 590h(b) and 590k of Title 16, relating to the utilization of State, county, local committees, the extension service, and other approved agencies, and to recognition and encouragement of cooperative associations, shall apply in the administration of this chapter; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under sections 590g, 590h, 590i, and 590j-590q of Title 16, and the

local administrative areas designated for the administration of this chapter shall be the same.

* * * * * * * * *

16 U.S.C. 590g

ADDITIONAL POLICIES AND PURPOSES OF CHAPTER—PURPOSES ENUMBERED.

(a) It is declared to be the policy of this chapter also to secure, and the purposes of this chapter shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; * * *

* * * * * * * * *

16 U.S.C. 590h provides in pertinent part:

PAYMENTS AND GRANTS OF AID—DURATION OF AUTHORITY OF SECRETARY OF AGRICULTURE.

* * * * * * * * *

PAYMENTS AND GRANTS OF AID; LOCAL, COUNTY, STATE COMMITTEES RULES AND REGULATIONS.

(b) * * * In carrying out the provisions of this section in the continental United States, except in Alaska, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided. The Secretary shall designate local administrative areas as units for administration of programs under this section. No such local area shall include more than one county or parts of different counties. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect annually from among their number a local committee of not more than three members for such area and shall also elect annually from among their number a delegate to a county convention for

the election of a county committee. The delegates from the various local areas in the county shall, in a county convention, elect, annually the county committee for the county which shall consist of three members who are farmers in the county. The local committee shall select a secretary and may utilize the county agricultural extension agent for such purposes. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have the power to vote. In any county in which there is only one local committee the local committee shall also be the county committee. In each State there shall be a State Committee for the State composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall be ex officio a member of such State committee. The ex officio member of the county and State committee shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary shall, as far as practicable, protect the interest of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owner and producer-controlled cooperative associations as will be in harmony with policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient

methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practicable way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleting crops. * * *

7 U.S.C. 1115 provides in pertinent part:

ALLOTMENTS OF QUOTAS; OR PRORATION—AUTHORIZATION; METHOD; MODIFICATION.

(a) Whenever the Secretary finds that the allotment of any quota, or proration thereof, established for any area pursuant to the provisions of this chapter, is necessary to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, or to prevent disorderly marketing or importation of sugar or liquid sugar, or to maintain a continuous and stable supply of sugar or liquid sugar, or to afford all interested persons an opportunity to market sugar or liquid sugar within any area's quota, after such hearing upon such notice as he may by regulation prescribe, he shall make allotments of such quota or proration thereof by allotting to persons who market or import sugar or liquid sugar, for such periods as he may designate, the quantities of sugar or liquid sugar which each such person may market in continental United States, the Territory of Hawaii, or Puerto Rico, or may import or bring into continental United States, for consumption therein. Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar-beets or sugar cane to which proportionate shares, determined pursuant to the pro-

visions of subsection (b) of section 1132 of this title, pertained; the past marketing or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. The Secretary may also upon such hearing and notice as he may by regulations prescribe, revise or amend any such allotment upon the same basis as the initial allotment was made.

APPEALS TO COURTS; GROUNDS.

(b) An appeal may be taken, in the manner hereinafter provided from any decision making such allotments, or revisions thereof, to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By an applicant for an allotment whose application shall have been denied.

(2) By any person aggrieved by reason of any decision of the Secretary granting or revising any allotment made to him.

. . . . . .

SAME; HEARING; REVIEW.

(e) At the earliest convenient time the court shall hear and determine the appeal upon the record before it, and shall have power, upon such record, to enter a judgment affirming or reversing the decision, and if it enters an order reversing the decision of the Secretary it shall remand the case to the Secretary to carry out the judgment of the court; PROVIDED, HOWEVER, that the review by the court shall be limited to questions of law and that findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Secretary are arbitrary or capricious. The court's judgment shall be final, subject, however, to review

by the Supreme Court of the United States, upon writ of certiorari on petition therefor, under section 347 of Title 28 by appellant, by the Secretary, or by any interested party intervening in the appeal.

* * * * * * * * * *

7 C.F.R. (1959 Supp.) 711.4 provides in pertinent part:

APPOINTMENT.

Three eligible farmers shall be appointed as regular members and three eligible farmers shall be appointed as alternate members to serve on each review committee. The Secretary shall make the appointments and designate one of the regular members as chairman and another regular member as vice-chairman. Notice of appointment shall be sent to the State committee, which shall in turn notify the farmers and the clerk to the review committee. Appointments may be made before, during, or after the period during which applications are required to be filed. Notwithstanding the foregoing, the Secretary shall have the continuing power to revoke or suspend any appointment made pursuant to the regulations in this part, and subject to the provisions of the act to make such other appointment as he may deem proper.

7 C.F.R. (1959 Supp.) 711.12 provides in pertinent part:

JURISDICTION.

A review committee shall have jurisdiction to hear all timely filed applications respecting quotas established or denied by official written notice for farms within its area of venue. In all cases, the review committee shall consider only such matters as, under applicable provisions of the act and regulations of the Secretary, are required or permitted to be considered by the county committee in the establishment of the quota sought to be reviewed.

7 C.F.R. (1959 Supp.) 711.23 provides in pertinent part:

DETERMINATION BY REVIEW COMMITTEE.

* * * Each determination made by the review committee shall be in writing, shall contain specific findings of fact and conclusion, together with the reasons or basis therefor, and shall be based upon and made in accordance with reliable, probative, and substantial evidence adduced at the hearing. * * *

7 C.F.R. (1959 Supp.) 728.911 provides in pertinent part:

DEFINITIONS.

As used in the regulations in this subpart and in all instructions, forms and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the content or subject matter otherwise requires.

. . . . . .

(d) COMMITTEES.

(1) "Community committee" means the group of persons elected within a community as the community committee pursuant to the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(2) "County committee" means the group of persons elected within a county as the county committee pursuant to the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

. . . . . .

(g) "Acreage indicated by cropland" means the number of acres computed by multiplying the cropland acreage for a farm by the ratio of historical wheat acreage determined pursuant to § 728.917 for all farms in the community (i.e., the local administrative area determined pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended), to the cropland acreage for all farms in the community: PROVIDED, that if the county committee finds that the historical wheat acreage as determined for the community is abnormally low or high due to widespread abnormal weather, then the ratio for the community may be the ratio determined by the county committee subject to approval of, or on behalf of the State committee on the basis of the average of the historical wheat acreages for such of the years 1954, 1955, 1956, as the county committee determines to normal.

* * * * * * * * *

7 C.F.R. (1959 Supp.) 728.914 provides:

SUPERVISION, REVIEW AND APPROVAL BY THE STATE COMMITTEES.

State committees shall have over-all responsibility for the administration of the regulations herein in their respective States. All acreage allotments shall be reviewed by the State committee or on behalf of the State committee by the State administrative officer, program specialist, or farmer fieldman and the State committee may revise or require revision of any determination made under regulations in this subpart. All acreage allotments for wheat shall be approved by the State committee or on behalf of the State committee by the State administrative officer, program specialist or farmer fieldman and no official notice thereof shall be mailed until such allotment has been approved by or on behalf of the State committee.

7 C.F.R. (1959 Supp.) 728.917 provides in pertinent part:

(a) DETERMINATION OF BASE ACREAGE FOR OLD FARMS.

The county committee shall, in accordance with the regulations in this subpart, determine a base acreage for each old farm which will reflect the factors of past acreage of wheat, tillable acres, crop-rotation practices, type of soil and topography. In arriving at the base acreage, consideration shall be given to the wheat history acreage on the farm during the years 1954 through 1957, tillable acres, type of soil, topography, the producer's crop-rotation system for the farm; including the equipment and other facilities available for carrying out such system of crop-rotation. Such base acreages shall be established as follows:

(b) HISTORICAL AVERAGE ACREAGE.

The county committee shall establish for each farm a historical average acreage which shall be the average of the wheat history acreages on the farm for 1954, 1955, 1956, and 1957. The wheat history acreages for 1954, 1955, 1956, shall be as provided in § 728.811 (n) and 728.816 (b) of the 1958 wheat acreage allotment regulations issued by the Secretary (22 F.R. 2337). The wheat history acreage for any farm for 1957 shall be the base acreage determined for the farm under § 728.716 of the 1957 farm wheat acreage allotment regulations (21 F.R. 1895, 6056), except as hereinafter provided in this paragraph. If the 1957 farm acreage allotment was knowingly overplanted, the wheat history acreage for 1957 for the farm shall be the wheat acreage for the farm. If the 1957 farm wheat acreage allotment was underplanted in 1957 for the purpose of reducing the amount of wheat a prior crop which had been previously stored to postpone or avoid payment of marketing quota penalty incurred by overplanting, the farm wheat acreage allotment in any year prior to

1957, the wheat history acreage for 1957 for the farm shall be the acreage obtained by multiplying the wheat acreage, including the acreage diverted under the acreage reserve and conservation reserve programs, by diversion credit factor. In such cases, the diversion credit factor will be the reciprocal of a decimal fraction which is 100 per centum of the county proration factor as determined under said regulations, the acreage diverted from the production of wheat under a 1957 acreage reserve agreement on any farm in 1957 shall be the smaller of (1) the wheat acreage placed in the 1957 acreage reserve by agreement, or (2) the 1957 farm wheat acreage allotment minus the acreage actually devoted to wheat on the farm. The acreage diverted from the production of wheat under a conservation reserve contract on any farm in 1957 shall be the smallest of (i) the acreage designated under the conservation reserve contract as conservation reserve at the regular rate, or (ii) the reduction soil bank base crops from the farm's soil bank base, to (iii) the amount by which the wheat acreage allotment for the farm exceeds the sum of (a) the acreage of wheat on the farm, (b) the acreage, if any, credited to wheat on the farm under the acreage reserve program, and (c) that part of the acreage by which the farm wheat acreage allotment was underplanted which was used to remove from storage wheat of a prior crop stored to avoid or postpone marketing quota penalties.

(c) ADJUSTED ACREAGE.

(1) The county committee shall adjust the historical average for any farm by eliminating from the period of years used in determining the historical average acreage the year or years for which it finds that the wheat history acreage was:

(i) Abnormally low due to excessive wet weather or flood.

(ii) Abnormally low due to drought.

(iii) Abnormally high because in previous years wheat or other crops failed or could not be planted.

(iv) No longer representtaive because of a change in operations which results in a substantial change in the established crop-rotation system for the farm.

(v) Not appropriate for 1959 because of a definitely established crop-rotation system being carried out on the farm.

(2) When one or more of the years are eliminated in accordance with the provisions of subparagraph (1)(i) through (v) of this paragraph, the average of the years not so eliminated shall be considered as the adjusted average acreage. If all four years are eliminated the adjusted acreage shall be zero.

(3) The county committee may further adjust the historical average or the adjusted average acreage, as the case may be, so as to make such acreage comparable with those acreages for other farms which are similar with respect to tillable acres, type of soil and topography, and which are similarly operated with respect to the rotation of crops, within the following limitations:

(i) If such acreage is abnormally low, it may be adjusted upward not to exceed 25 per cent. If the adjusted average acreage is zero because one or more of the years in the applicable period was eliminated under subparagraph (1)(i), (ii), (iii) or (iv) of this paragraph, the twenty-five percent limitation will not apply and the adjusted average acreage may be adjusted upward. In no event shall the adjustment made herein exceed the acreage indicated by cropland. If all the years in the applicable period are eliminated under subparagraph (1)(v) of this paragraph, the ad-

justed average acreage may be adjusted upward but not above the acreage of cropland for the farm. * * *

1959 Wheat Allotment County Handbook (1-Wheat-59) (Part 9), Section 25.C.3

ESTABLISHED CROP-ROTATION.

No adjustment shall be made for Reason 5 unless it is known that there is a definite crop-rotation system followed on the farm which involves a substantial change in the acreage planted to wheat from year to year. Adjustments properly made under this reason for 1958, i.e., farms with an "X" in column 14, will generally necessitate compensating adjustments for 1959 to conform with the rotation being followed on the farm; and similarly, adjustments made under this reason for 1959 will necessitate compensating upward or downward adjustments for subsequent years.

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No. 894

In the Supreme Court of the United States

OCTOBER TERM, 1959

HAROLD WILLEY, PETITIONER

v.

REVIEW COMMITTEE, VENUE VII, COMMODITY STABILIZATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, SITTING IN THE CITY OF WAHOO, NEBRASKA, IN AND FOR SAUNDERS COUNTY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Nebraska is unreported. The opinion of the United States Court of Appeals for the Eighth Circuit (Pet. App. 1a–21a) is reported at 275 F. 2d 264.

JURISDICTION

The judgment of the court of appeals was entered on February 18, 1960 (Pet. App. 21a–22a). The petition for a writ of certiorari was filed on April 29, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Agriculture's regulations pertaining to farm acreage allotments for the 1959 crop of wheat, 23 F.R. 1672, 7 C.F.R. (1959 Supp.) 728.911 *et seq.*, issued pursuant to the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.*, prescribe reasonable adjustments for crop-rotation practices.

2. Whether Congress intended local agriculture review committees, reviewing assignments of acreage allotments pursuant to 7 U.S.C. 1363, to be bound by regulations issued by the Secretary pursuant to statutory authority.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.*, and the Secretary of Agriculture's regulations pertaining to farm acreage allotments for the 1959 crop of wheat, 23 F.R. 1672, 7 C.F.R. (1959 Supp.) 728.911 *et seq.*, are set forth in the Appendix to the petition, pp. 22a–38a.

STATEMENT

This is an action for judicial review of an agriculture review committee's decision, affirming the 1959 base wheat acreage and wheat acreage allotment assigned to petitioner's farm pursuant to the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended, 7 U.S.C. 1281 *et seq.* The relevant facts and regulatory provisions may be stated as follows:

A. The Agricultural Adjustment Act of 1938 directs the Secretary of Agriculture annually to pro-

claim the "national acreage allotment" for the following year's crop of wheat. 7 U.S.C. 1332. The Act provides for the apportionment of this allotment among the States, and of the state allotment among the respective counties. The county allotments "shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of past acreage of wheat, tillable acres, crop-rotation practices, type of soil, and topography."[1] 7 U.S.C. 1334 (a), (b), (c). In order to implement these provisions, the Secretary must "prescribe such regulations as are necessary for the enforcement of [the Act]" (7 U.S.C. 1375).

For the crop year 1959, the Secretary proclaimed a national acreage allotment of wheat, announced the allocation of this allotment among the States and their respective counties, and issued regulations governing the apportionment of the county allotment among individual farms.[2] These regulations require the local county committees to determine a 1959 "base

[1] This distribution is made by county committees composed of local farmers. 7 U.S.C. 1334(c), 1388.

The individual farm's wheat acreage allotment is a key factor in the statutory scheme of limiting wheat production. In years when marketing quotas are in effect (7 U.S.C. 1335(a), 1336, 1340(1)), a monetary penalty is payable on surplus production exceeding the "farm marketing quota." This quota, in brief, is the production of the acreage planted to wheat, less the production of the acreage planted to wheat which is in excess of the farm's acreage allotment. 7 U.S.C. 1340 (1), (2). Similarly, wheat price supports are available only to "cooperators." 7 U.S.C. 1441. A "cooperator" is one who does not knowingly plant in excess of his farm acreage allotment. 7 U.S.C. 1428(b).

[2] 7 C.F.R. (1959 Supp.) 728.903, 728.907, 728.911 *et seq.*

acreage" for each farm. 7 C.F.R. (1959 Supp.) 728.917. The county committees are then directed to apportion the county acreage allotment, less certain reserves, "pro rata among all farms within the county on the basis of the base acreages * * *." 7 C.F.R. (1959 Supp.) 728.918.

In determining base acreages for 1959, the county committees are required to establish an "historical average acreage," which is, in general terms, the average of the wheat acreage seeded in each of the years 1954, 1955, 1956 and 1957.[3] 7 C.F.R. 728.917(b), 728.911(m). The committee is permitted to adjust the historical average acreage if it determines that one or more of the years in the base period 1954–1957 should be eliminated for one of five specified reasons. Two of these reasons, numbers 4 and 5, relate to crop rotation practices (involved here)—that the wheat acreage for that year is:

> (iv) No longer representative because of a change in operations which results in a substantial change in the established crop-rotation system for the farm.
>
> (v) Not appropriate for 1959 because of a definitely established crop-rotation system being carried out on the farm. [7 C.F.R. (1959 Supp.) 728.917(c)(1) (iv), (v)][4]

If the committee eliminates any year from the base period, the average of the remaining uneliminated

[3] In those years in which the farmer complied with his acreage allotment, a figure approximating his base acreage rather than his actual acreage is used to compute his "historical average acreage." 7 C.F.R. (1959 Supp.) 728.917(b).

[4] 7 C.F.R. (1959 Supp.) 728.917(c)(1) (iv) and (v) will be called "Reason 4" and "Reason 5."

years constitutes the adjusted average acreage. If all four years are eliminated, the adjusted average acreage is zero. 7 C.F.R. (1959 Supp.) 728.917(c)(2). If no further adjustment is made, the adjusted average acreage is the 1959 base acreage. 7 C.F.R. (1959 Supp.) 728.917(e).

However, if a farm's adjusted average acreage is zero because all four years of the base period are eliminated, the county committee may adjust it further so as to make the acreage comparable to that of other similar farms. If all of the base years are eliminated for Reason 5, the adjusted average acreage may be raised as high as the farm's total acreage of cropland. 7 C.F.R. (1959 Supp.) 728.917(c)(3)(i). But if at least one of the years is eliminated for Reason 4, the adjusted average acreage may not be raised higher than the "acreage indicated by cropland," which is the acreage obtained when a farm's cropland acreage is multiplied by the ratio of the community's historical wheat acreage to the community's total cropland acreage. *Ibid.*; 7 C.F.R. (1959 Supp.) 728.911(g). If the adjusted average acreage is thus further adjusted, the resulting figure is the 1959 base acreage. 7 C.F.R. (1959 Supp.) 728.917(e).

B. Petitioner operates a 320-acre farm in Nebraska, of which 285 acres are used as cropland (R. 56).[3] Since 1951, he has planted varying amounts of wheat and alfalfa, together with a number of other crops. Starting in 1956, he ceased growing any crops other than wheat and alfalfa, and since that year has de-

[3] "R." refers to the printed record in the court of appeals.

voted most of his cropland to alfalfa (R. 23–24). Petitioner claims that alfalfa is his principal crop and that wheat is grown only for rotation purposes (R. 2–3).

For the crop year 1959, the county committee assigned an acreage allotment of 44.3 acres to petitioner's farm (R. 15). The committee reached this figure by first computing an historical average acreage for the base period for petitioner's farm. Since the relevant wheat acreages were 35 acres in 1954, 45 acres in 1955, 65 acres in 1956, and 33 acres in 1957, the farm's historical average acreage was 44.5 acres. The committee adjusted this figure for Reason 4, however, by eliminating the three lowest years, *i.e.*, 1954, 1955 and 1957. Because of this adjustment, the base acreage was 65 acres.[6] Application of the county factor to this acreage resulted in the 1959 allotment of 44.3 acres.

Petitioner appealed this decision to the local review committee[7] on the ground that "insufficient consideration" had been given to his particular crop-rotation system. He sought a base acreage of 125 acres[8] (R. 16–17). At the hearing before the review committee, petitioner stated that he would like to plow up his alfalfa every five or six years and then grow wheat in its place for three years.[9] He testified that,

[6] If the adjustment had not been made, the base acreage would have been 44.5 and the acreage allotment would have been 30.3.

[7] Provision for such review is made by 7 U.S.C. 1363.

[8] A base acreage of 125 acres would result in an acreage allotment for petitioner's farm of about 85 acres.

[9] Alfalfa has deep roots which dehydrate the soil. Consequently, it should be plowed up every few years and rotated

"but for the allotment system," he would have about one-third of his acreage (95 acres) planted in wheat and two-thirds in alfalfa at all times (R. 35–37). The review committee denied petitioner's application for an increase in base acreage (R. 57–60).

Petitioner then brought this suit for review of that decision under 7 U.S.C. 1365.[10] He contended that the committee should have eliminated all the years in the base period for Reason 5 (rather than Reason 4), and then should have given his farm a base acreage of 125. The district court, agreeing with the review committee that Reason 5 was inapplicable, nevertheless reversed the committee and remanded the cause to the committee with directions to eliminate *all* the base years for Reason 4 and then to determine the base acreage for petitioner's farm on the basis "not of his crop history as was done, but of his long range crop rotation system as instituted and now established on his farm" (R. 12). The district court did not refer to the "acreage indicated by cropland" provision, which imposes a ceiling on adjustments where all base years are eliminated for Reason 4 (*supra*, p. 5). The "acreage indicated by cropland" for petitioner's farm is 15 acres (R. 59).

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with a crop which requires little water and will therefore permit moisture to penetrate to the subsoil. Wheat is a good rotation crop for this purpose (R. 36, 48–49).

[10] In such proceedings "review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive." 7 U.S.C. 1366.

The court of appeals reversed the district court and affirmed the review committee's decision. It held, first, that the Secretary's 1959 regulations—including the "acreage indicated by cropland" limitation—"represent in their entirety a reasoned and reasonable administrative effort to implement the statute fairly" (Pet. App. 16a). Second, the court determined that the review committee was correct in rejecting the applicability of Reason 5, and in eliminating three base years for Reason 4. While agreeing with the review committee that the year 1956 need not be eliminated, the court noted the "practical result" that the (Pet. App. 19a)

> retention of 1956 alone gave plaintiff a greater average base than would have been the case if any other year or years of the base period had been retained, or if all the years had been eliminated under Reason (iv), for then the 15 acre maximum under "acreage indicated by crop land" would apply. One may, therefore, conclude that the committees were perhaps over generous to the plaintiff. The defendant makes no objection to the retention of 1956 with consequent greater average acreage, and we, therefore, do not upset its retention.

ARGUMENT

Petitioner's position is that the Secretary's regulations are not sufficiently flexible to allow full accommodation for the particular crop-rotation situation on his farm for the 1959 crop year.[11] The controversy

[11] Petitioner no longer challenges the review committee's decision as being at variance with the regulations. He concedes, in effect, that his farm's base years could not be eliminated for

thus centers on the circumstances of this one case and has no broad or general importance. Moreover, interpretation of the regulations applicable in 1959 would have little, if any, future impact, since the 1960 regulations relating to adjustments for crop-rotation practices are substantially different. 24 F.R. 2475, 2477. In any case, the 1959 regulations—which were fully reviewed and sustained by the court of appeals below—are based on reasonable interpretations of the governing Act and are entirely valid. There is therefore no occasion for review by this Court.

1. In 7 U.S.C. 1334(c), Congress directed the Secretary to apportion county allotments on the basis of, *inter alia*, "past acreage of wheat" and "crop-rotation practices." Consistently with these standards, the Secretary's 1959 regulations prescribe a formula which is based largely on crop history, but which allows adjustments where the actual history is inappropriate because of crop-rotation practices. 7 C.F.R. (1959 Supp.) 728.917. These regulations must be respected unless "plainly and palpably inconsistent with" the statute. *Boske* v. *Comingore*, 177 U.S. 459, 470; *Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, 501.[12]

Reason 5, as interpreted by the Department of Agriculture (Pet. 16). And he realizes that if *all* the base years had been eliminated for Reason 4, his base acreage—under the regulations—could not have exceeded 15 acres, the "acreage indicated by cropland" for his farm (see *supra*, pp. 5, 7).

[12] See also *Rigby* v. *Rasmussen*, 275 F. 2d 861, 863 (C.A. 10); *Gardner* v. *United States*, 239 F. 2d 234, 237 (C.A. 5); *Moe* v. *Wesen*, 172 F. Supp. 259, 262 (D. Mont.); *Luke* v. *Review Committee*, 155 F. Supp. 719, 723 (W.D. La.); and *Edwards* v. *Owens*, 137 F. Supp. 63, 65 (E.D. Mo.). In all of these

If a farm's wheat history during the base period is "not appropriate for 1959 because of a definitely established crop rotation system being carried out on the farm", adjustment may be made for Reason 5, *supra*, p. 4. As petitioner acknowledges (R. 10; Pet. 7–8, 16), this provision covers farms on which there is a "substantial change in the acreage planted to wheat from year to year," *i.e.*, an "odd" and "even" wheat rotation system. It does not cover farms where, as in petitioner's proposal, the total annual wheat acreage of the farm is substantially constant (1959 Wheat Allotment County Handbook, par. 25C.3; R. 10–11, 41; Pet. App. 10a, 16a). In the other situation where past history may be inappropriate—*i.e.*, where, as here, there is a "change in operations which results in a substantial change [for 1959] in the established crop rotation system for the farm"—adjustment may be made for Reason 4, *supra*, p. 4 (R. 9–10). Thus, the two provisions are complementary. Reason 5 protects the farmer whose previously established crop-rotation system results in an historical average acreage for 1959 which is unduly low, and Reason 4 protects the farmer who, by inaugurating for 1959 a substantial change in his crop-rotation system, might otherwise be prejudiced by a low historical average based on his past rotation program. In this fashion the Secretary has sought to effectuate the congressional purpose that farm acreage allotments be based on both "past acreage of wheat" and "crop-rotation practices."

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cases, regulations issued by the Secretary under this Act were held valid as not "plainly and palpably" conflicting with the statute.

Petitioner challenges the "acreage indicated by cropland" restriction on upward adjustments where all the base years for a farm are eliminated for Reason 4. This ceiling assures that, since the crop history of such a farm is altogether ignored, the base acreage will not be set above the proportion of cropland historically devoted to wheat by all the other farms in the community. In keeping with the apparent Congressional decision that "each producer should be permitted to retain more or less the share of the market which he had acquired in the past" (*Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U.S. 604, 612), the limitation is intended to protect the allotments of other farms in the county from sharp reduction due to the increased requirements of a farmer who changes his rotation system by devoting a larger proportion of land to wheat. As stated in *Secretary of Agriculture* v. *Central Roig Refining Co., supra,* p. 614, it is not for the Court to reject the balance thus struck by the Secretary "on consideration of all the factors unless [it] can say that his judgment is not one that a fair-minded tribunal with specialized knowledge could have reached."

2. Petitioner also contends that Congress intended crop-rotation matters to be "adjudicated at the local level" and that the Secretary "may not create barriers [through his regulations] to an adjudication of a crop-rotation system on the merits" (Pet. 18–19). The error in this position is evident from the statutory language indicating that county allotments shall be apportioned among individual farms "*by the Sec-*

retary, through the local committees * * *" (7 U.S.C. 1334(c), emphasis added). The function of the review committee is to *review* the county committee's action; there is no suggestion in the statute that the review committees are not, or should not be, bound by the Secretary's regulations issued pursuant to statutory authority. 7 U.S.C. 1363, 1375(b). And even if petitioner were correct, he could not gain in this litigation because the review committee clearly indicated its own position, stating that (R. 59)

> [i]n review of the * * * facts and knowing that the allotment programs purpose was to control wheat production by each producer taking his fair share of any reduction needed, we * * * believe this farm has received fair consideration and allotted a higher base than the history justifies * * *.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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